

United States  
Court of Appeals  
for the Ninth Circuit

BETTY GULLEY, \_\_\_\_\_

Appellant,

vs.

MARY JANE GULLEY, Also Known as Mary J.  
Gulley, Now MARY JANE WAUSON, and  
UNITED STATES OF AMERICA,

Appellees.

\_\_\_\_\_  
Transcript of Record  
\_\_\_\_\_

Appeal from the United States District Court  
for the District of Nevada

FILED

JUL 20 1954

PAUL P. O'BRIEN



No. 14328

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United States  
Court of Appeals  
for the Ninth Circuit

BETTY GULLEY, \_\_\_\_\_

Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney at Law,

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For Appellee Mary Jane Gulley.





In the District Court of the United States, for the  
District of Nevada

Civil No. 867

BETTY GULLEY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA and  
MARY JANE GULLEY, Also Known as  
MARY J. GULLEY,

Defendants.

### COMPLAINT

1. Plaintiff is a resident of Ely, within the District of Nevada. She is a married woman, the wife of Guy A. Gulley, of the same place, and brings this action in her own name as for the recovery of separate property. This action is brought under the World War Veterans' Act, as amended (45 Stat. 964), and the National Service Life Insurance Act, as amended (54 Stat. 1014); 38 U. S. C. A. §445 and following.

2. Plaintiff is the mother, and the said Guy A. Gulley the father, of Wallace Phillip Gulley, who was born November 13, 1925; enlisted in the United States Marine Corps on May 28, 1943; was honorably discharged therefrom at Tienstin, China, on March 20, 1946, but re-enlisted therein at the same place on March 21, 1946; and died on August 13, 1947, from injuries sustained in a motorcycle-automobile collision while still in the service and sta-

tioned at the United States Marine Corps Air Station at El Toro near Santa Ana, California.

3. While in training at San Diego, California, on July 1, 1943, the said Wallace Philip Gulley applied for and had issued to him by the defendant United States a certificate of National Service Life Insurance in the sum of \$10,000, payable in case of death, and named plaintiff as beneficiary thereunder.

4. That monthly premiums of \$6.40 each were deducted from the service pay of the said Wallace Phillip Gulley and paid to the Veterans Administration and the said National Service Life Insurance certificate remained in full force and effect at the time of his death as aforesaid, which occurred within the five year term of said insurance certificate and without any conversion thereof to other type of insurance, and without any change of beneficiary having been made by written request therefor as provided by the regulations of said Veterans Administration.

5. On December 6, 1947, plaintiff duly made claim in writing to the Veterans Administration of the United States for the payment of the sum due beneficiary under such certificate of insurance, but was thereafter informed by said Veterans Administration that "the widow" (meaning the defendant Mary Jane Gulley) had made claim for this insurance and submitted evidence for the purpose of showing that a change of beneficiary was made in

her favor. Thereafter such proceedings were had thereon that on December 28, 1948, plaintiff was advised that the conflicting claims had been determined in her favor; on March 10, 1949, of advice from the said widow of her intention to appeal from the action of disallowance of her claim; and on May 23, 1949, that the said Mary J. Gulley had so appealed. On August 19, 1949, plaintiff was advised that the said appeal had been certified to the Board of Veterans Appeals, and on April 12, 1950, there were forwarded to her a letter advising that a decision constituting administrative denial of her claim had been reached by the Board of Veterans Appeals, together with a copy of such decision. The letter also advised her that unless notice were received within sixty days from its date of her intention to institute further legal action, settlement of other claims for such insurance, if any, would be affected. Such notice was so given in writing under date of April 22, 1950, and this action is being brought pursuant thereto.

6. That as appears from the matters set forth under paragraph 5 hereinabove, a disagreement exists between plaintiff and the said Veterans Administration as to payment of such insurance according to the terms of the certificate.

7. That as plaintiff is informed and believes and on such information and belief alleges, the defendant Mary Jane Gulley now resides and at all times herein mentioned has resided outside of the District and State of Nevada, and that her present place of

residence is at Downey in the County of Los Angeles and State of California.

8. That the said defendant Mary Jane Gulley is a necessary party defendant hereto, and should be brought in by appropriate order in order that the right to the proceeds of such insurance may be judicially determined between plaintiff and said defendant.

Wherefore, plaintiff prays judgment:

(a) That the defendant Mary Jane Gulley take nothing by her said claim;

(b) That the defendant United States of America be required to pay to plaintiff the full amount of such insurance;

(c) For a reasonable fee to be paid to her attorney for the prosecution of this action; and

(d) For her costs of action herein incurred.

/s/ ROBERT R. GILL,  
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed May 26, 1950.

[Title of District Court and Cause.]

ANSWER

Comes Now, the defendant Mary Jane Gulley and answers the complaint of plaintiff on file herein as follows:

I.

Defendant admits paragraph 1, of plaintiff's complaint.

2.

Defendant admits paragraph 2, of plaintiff's complaint.

3.

Defendant admits paragraph 3, of plaintiff's complaint.

4.

Defendant admits the allegations contained in paragraph 4, of said complaint commencing with the words, "that monthly premiums" on line 4, page 2, and ending with the words, "other type of insurance" on line 10, page 2. Defendant denies the allegations in paragraph 4, page 2, commencing with the words, "and without any" on line 10, and ending with the words, "Veteran's Administration" on line 12.

5.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, of said complaint and therefore denies the same.

6.

Defendant admits paragraph 6, of said complaint.

7.

Defendant admits paragraph 7 of said complaint.

8.

Defendant admits paragraph 8, of said complaint.

For a Further, Separate and Affirmative Defense,  
Mary Jane Gulley, Defendant, Alleges:

1.

That defendant and Wallace Phillip Gulley were lawfully married on October 15, 1946, at Los Angeles County, California.

2.

That about two months after the marriage of defendant and the said Wallace Phillip Gulley the said Wallace Phillip Gulley advised the defendant, his wife, that he had made a change of beneficiary in his National Service Life Insurance policy so that the said defendant was named as beneficiary rather than his mother Betty Gulley, the plaintiff herein.

3.

Defendant alleges upon information and belief that the said Wallace Phillip Gulley delivered or caused to be delivered to the proper officials a written form to change the beneficiary of his National Service Life Insurance policy from that of his mother Betty Gulley, to his wife Mary Jane Gulley, this defendant; and that said form was delivered on or prior to February 5, 1947.

4.

That during his period of service while he was

stationed at the United States Marine Corps Air Station at El Toro, California, the said Wallace Phillip Gulley, husband of Mary Jane Gulley, defendant herein, filled out and signed a confidential statement in which, among other things, he stated that he held a National Service Life Insurance policy in the amount of \$10,000, and he listed Mrs. Wallace Phillip Gulley, his wife, the defendant herein, as the beneficiary thereof.

## 5.

That on April 12, 1950, the Board of Veteran's Appeals, Veteran's Administration, Washington, D. C., made its decision and final determination, wherein it held that the defendant herein, Mary Jane Gulley, was the beneficiary in the National Service Life Insurance policy of the said Wallace Phillip Gulley.

## 6.

That the defendant Mary Jane Gulley has employed Ridley C. Smith, Attorney at Law of Santa Ana, California, and Oliver C. Custer, Attorney at Law of Reno, Nevada, to represent her in this case. That she has not paid her said attorneys any fees whatsoever and has not entered into any contract for a fee with said attorneys and that said attorneys have not charged a fee or received a fee as compensation for their services. That defendant requests this Court to allow a reasonable fee to her said attorneys pursuant to the statute in such cases made and provided.

Wherefore, the defendant Mary Jane Gulley re-

spectfully prays that the plaintiff take nothing by her complaint on file herein and that the same be dismissed; that the Court adjudge and decree that the defendant Mary Jane Gulley is the beneficiary in said policy of National Service Life Insurance on the life of Wallace Phillip Gulley and that the Court decree that she is entitled to all of the proceeds from said policy of life insurance; that the defendant be awarded her costs and disbursements including a reasonable fee for her said attorneys; and for such other and further relief as to the Court may seem equitable in the premises.

/s/ OLIVER C. CUSTER,

/s/ RIDLEY C. SMITH,

Attorneys for Defendant,  
Mary Jane Gulley.

[Endorsed]: Filed October 17, 1950.

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[Title of District Court and Cause.]

#### ORDER ON PRE-TRIAL CONFERENCE

Pursuant to the Order heretofore made, the Pre-Trial Conference in the above-entitled action was held at Reno, Nevada, at 10:30 a.m. of Friday, June 22, 1951, Robert R. Gill, Esq. appearing for plaintiff; Bruce R. Thompson, Esq., Assistant United States Attorney, appearing for defendant United States of America; and Oliver C. Custer, Esq. appearing for defendant Mary Jane Gulley,



It Is Hereby Ordered that the action taken at such Pre-Trial Conference is as follows:

The defendant Mary Jane Gulley has produced for the inspection of plaintiff the original of the document called "Confidential Statement" referred to in Paragraph VII of the Second Defense contained in the answer of the United States. Counsel for the plaintiff has returned, after inspection, the document called "Confidential Statement" mentioned in said Paragraph VII of the Second Defense in the answer of the United States.

The Confidential Statement is offered in evidence by the defendant Mary Jane Gulley and admitted as defendant Mary Jane Gulley's Ex. A.

Plaintiff does not concede the statement in the answer of the United States indicating that this document was ever in the possession of the Marine Corps unless there is some other evidence on that or that it was ever filed officially with anyone. Plaintiff admits its execution and existence.

As to Paragraphs VI and VII of the answer of the United States, the plaintiff denies that the document "Confidential Statement" was at any time filed with the Commanding Officer at El Toro Marine Air Base, California.

Matters Remaining In Controversy:

1. Whether the document "Confidential Statement" was filed with the proper officer of the United States Marine Corps. Plaintiff contends that to be

effective such document should have been filed with the Commanding Officer at the El Toro Marine Air Base.

2. Even if so filed, such document would not have constituted a change in beneficiary.

Dated: This 10th day of September, 1951.

/s/ ROGER T. FOLEY,  
United States District Judge.

[Endorsed]: Filed September 10, 1951.

---

[Title of District Court and Cause.]

OPINION, FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Plaintiff Betty Gulley, the mother of Wallace Phillip Gulley, brought this action against the United States of America and Mary Jane Gulley to determine whether she or Mary Jane Gulley, now Mary Jane Wauson, is entitled as beneficiary to the proceeds of a National Service Life Insurance policy issued July 1, 1943, on the application of Wallace Phillip Gulley.

In *Bradley v. United States*, 10 Cir., 143 F. 2d 573, a National Service Life Insurance policy was issued to Eugene Morris Bradley while serving as a flying officer in the United States Army, in which his mother was designated as beneficiary. Subsequently he married and his wife testified at the

trial that the insured had discussed with her the matter of changing the beneficiary in his policy from his mother to her and had expressed an intention to do so. She also testified that he later informed her that "he had taken care of the insurance at the army base." Affidavits of a number of his comrades stated he had on numerous occasions discussed with them the proposition of changing the beneficiary of his insurance from his mother to his wife and that he had sought and obtained advice from them concerning the method for effecting the change and expressed an intention so to do. After the death of the insured, the Veterans' Administration requested and received the "confidential personal report" executed by the insured and filed with the Headquarters of the 57th Pursuit Group, Windsor Locks, Connecticut. The Veterans' Administration informed the mother of its receipt of the report, and that according to it, her son had stated that his wife was the beneficiary under the government insurance. The Court in its opinion stated (p. 577):

"[6] In every case involving war risk insurance wherein the courts have recognized and decreed a change of beneficiary, the facts have amply shown not only an expressed intention, but positive and unequivocal acts on the part of the insured, designed to effectuate his expressed intentions. Citing cases. And in the absence of some act or deed having for its purpose the execution of the insured's intention, the courts have refused to decree a change of beneficiary. Citing cases.

“[7] To meet this postulate, it is argued that the ‘confidential personal report’ executed by the insured, addressed to and filed with his group headquarters, constituted not only an expression of his intention, but an attempt to change the beneficiary from his mother to his wife, which the court should recognize as the fulfillment of his intentions and the requirements of the regulations. \* \* \*

“[8] \* \* \* When given its most liberal construction in the light of all the facts and circumstances, we are convinced that it [confidential personal report] cannot be treated as an effectuation of the insured’s intention to change his beneficiary.”

Circuit Judge Murrah delivered the opinion of the Court, Circuit Judge Bratton concurred, and Circuit Judge Phillips dissented. There is a difference of opinion on the questions here presented among the circuits—some follow the prevailing opinion and others the dissenting opinion. Judge Phillips, considering the confidential report said:

“In the report, referred to in the majority opinion, the insured stated that he had the policy of insurance and that the beneficiary thereunder was Ann M. Bradley, his wife, and that the policy was in her possession. That he believed that by making such statement in the report and delivering the policy to his wife he had effected the change of beneficiary is manifest by the fact that immediately thereafter he told his wife he had ‘taken care of the insurance at the Army Base.’ ”

In the present case, the confidential report does not show who had custody of the policy.

In *Shapiro v. United States*, 2 Cir., 166 F. 2d 240:

“\* \* \* the insured reported to Lt. Dunn, a battalion adjutant at Fort McClellan, Alabama, and said he had recently been married and wished to change the beneficiary of his insurance policy from his mother to his wife. A day or two later, he stated to Dunn that he wished to fill out the form so changing his beneficiary. Lt. Dunn told a clerk to give Shapiro the form for changing his life insurance beneficiary. The clerk gave him a W. D., A. G. O. Form No. 41 which, though entitled ‘Designation of Beneficiary,’ was not designed to be used to change the beneficiary of an insurance policy but was a form intended for designating the beneficiary of the six months’ gratuity, payable in case of death, and the person to be notified in case of emergency. \* \* \* Shapiro filled out and signed this form, naming his wife as primary beneficiary, and his mother as alternate beneficiary, in the event the wife died before payment was made. Lt. Dunn then witnessed this form, which was forwarded by the message center to the War Department in Washington. \* \* \*

“[4] We have in the case at bar both an act of the insured in signing the form, and oral evidence of his intent to effect thereby a change of beneficiary of his insurance policy. Under the authorities,

a change of beneficiary was thus legally effected. Citing cases.”

In referring to *Bradley v. United States*, 10 Cir., 143 F. 2d 573, and Judge Phillips’ dissenting opinion therein, and *Collins v. United States*, 10 Cir., 161 F. 2d 64, the Court, near the close of its opinion, stated:

“We cannot say that either decision differed as a matter of law from the other authorities we have cited, or from the conclusion we have reached in the case at bar. If the *Bradley* decision be thought to differ, the conclusion reached in the dissenting opinion of Judge Phillips accords with our own views.”

In *Kendig v. Kendig*, 9 Cir., 170 F. 2d 750, Circuit Judge Healy, speaking for the Court of a confidential statement such as we have here, said:

“[2] *Kendig’s* confidential statement filed with his Aviation squadron is the most important item of proof here. The mother claims it is purely hearsay, or, if competent for any purpose, that it can be considered only as evidence of an unexecuted intent. We disagree. The statement is not hearsay nor is its probative value limited to its bearing on the insured’s intent, if indeed it bears more than retrospectively on that subject. It has dignity at least as evidence of a past act—much greater dignity, we think, than has an oral declaration made in the course of a conversation, however serious. Oral declarations of this type are likely to be misunder-

stood or misreported, or they may have been intended merely to reassure. This statement, on the contrary, imports verity. Its solemnity becomes evident when we remember that it was prepared and signed by one who realized that his life was hourly in jeopardy and who was aware of the inexorable circumstances under which, only, the document would be opened and read.”

The Court, having heard the evidence adduced at the trial, makes the following findings of fact and conclusions of law :

#### Findings of Fact

1. That this action was brought under and by virtue of 38 U.S.C.A. § 445, and following.

2. That plaintiff is the mother of Wallace Phillip Gulley. That Wallace Phillip Gulley enlisted in the United States Marine Corps on May 28, 1943, and was honorably discharged therefrom at Tientsin, China, on March 20, 1946, and re-enlisted in said Marine Corps on March 21, 1946; that he died on August 13, 1947, from injuries sustained in a motorcycle-automobile collision while still in the Service and stationed at the United States Marine Corps Air Station at El Toro near Santa Ana, California.

3. That on July 1, 1943, a certificate of National Service Life Insurance in the amount of \$10,000, payable in case of death, was issued to said Wallace Phillip Gulley and that his mother, the plaintiff Betty Gulley, was named as beneficiary therein.

4. That monthly premiums of \$6.40 each were deducted from the service pay of Wallace Phillip Gulley and paid to the Veterans' Administration and that said National Service Life Insurance certificate remained in full force and effect at the time of his death; that no written request for change of beneficiary was made on the form designated by applicable regulations of the Veterans' Administration.

5. That on December 6, 1947, plaintiff made claim in writing to the Veterans' Administration of the United States for the sum due beneficiary under said certificate of insurance; that the widow, Mary Jane Gulley, also made claim to such insurance to the Veterans' Administration and submitted evidence for the purpose of showing that a change in beneficiary was made in her favor. That on December 28, 1948, plaintiff was advised that the conflicting claims had been determined in her favor; that on March 10, 1949, plaintiff received notice from said widow of her intention to appeal; and that on August 19, 1949, plaintiff was advised that said appeal had been certified to the Board of Veterans' Appeals.

That on April 12, 1950, plaintiff received notice that a decision constituting an administrative denial of her claim had been reached by the Board of Veterans' Appeals and that unless notice was received within sixty (60) days of plaintiff's intention to institute further legal action, settlement of other claims for such insurance, if any, would be effected.



That notice of plaintiff's intention to institute legal action was given in writing under date of April 22, 1950, and that this action was brought pursuant thereto.

6. That Wallace Phillip Gulley and Mary Jane Gulley were married at Downey, California, on October 15, 1946, and that they continued to be husband and wife until the death of said Wallace Phillip Gulley on August 13, 1947. That after the death of Wallace Phillip Gulley, his then widow, Mary Jane Gulley, remarried on December 29, 1950, to a man named Wauson.

7. That on January 29, 1947 the then Mary Jane Gulley caused a policy of life insurance to be issued by Occidental Life Insurance Company in the sum of \$2,000 naming her husband Wallace Phillip Gulley as beneficiary thereof. That said policy was in lieu of a former policy of the same company naming Mary Jane Gulley's mother as beneficiary.

That at or about the time of such change of beneficiary in favor of decedent, he stated to his wife that he was also going to change his said National Service Life Insurance certificate over to her as beneficiary.

Several months after the conversation of about January 29, 1947, defendant Mary Jane Gulley informed decedent that she contemplated taking out another insurance policy and in response to such suggestion, the following conversation in substance

occurred between decedent and said Mary Jane Gulley:

He responded by informing her that they were paying enough premium for insurance and Mary Jane Gulley then made the following statement, for the moment not thinking of the National Service Life Insurance certificate: "Well, you don't have any insurance." And decedent replied, "I do. I have \$10,000 in government insurance in your name." And he stated that he was then paying \$6.40 a month premium for the National Service Life Insurance policy.

8. That during the month of June, 1947, at El Toro, California, Neil D. Baker, then a member of the Marine Corps, inquired of decedent whether he had had his insurance changed and decedent replied that he had had his insurance changed to his wife's name, and decedent informed said Baker that his wife Mary Jane Gulley was the beneficiary of his National Service Life Insurance, and decedent informed said Baker that the amount of said insurance was \$10,000. That said conversation was in the back room of the Staff NCO Club, Marine Corps Air Station, El Toro, California.

9. That on February 5, 1947, said decedent Wallace Phillip Gulley executed and filed in the office of Headquarters Squadron, U. S. Marine Corps Air Station, El Toro (Santa Ana), California, a document called "Confidential Statement" which, among other matters, contained the following:

“11. I hold the following insurance policies:

(1) (Company): NSI. (Amount): 10,000.  
(Beneficiary): Mrs. Wallace P. Gulley.”

That the Mrs. Wallace P. Gulley named therein as beneficiary is the said Mary Jane Gulley.

10. That a few days after Mother’s Day in May, 1947, decedent Wallace Phillip Gulley stated in substance to his brother Guy William Gulley as follows: “\* \* \* in the event that the folks were separating, that he was leaving his insurance in his mother’s name, due to the fact that she had a home, which she did, and no other source of income.”

11. That said decedent did state on or about Mother’s Day in May, 1947, to his sister Virginia Barbee in substance as follows: “My brother told me he was having trouble with his wife and he did not change his insurance; he had left it the way he had previously made it to my mother, without any contingent.”

12. That on the occasion of the visit of the decedent Wallace Phillip Gulley, on or about Mother’s Day, 1947, or at any other time or at all, there was no conversation by the mother, or in her presence by any other person, concerning who then was, or who was to be, designated as beneficiary of the aforesaid National Service Life Insurance.

13. That Oliver C. Custer, Attorney at Law of Reno, Nevada, and Ridley C. Smith, Attorney at Law of Santa Ana, California, prepared and caused

to be filed in this action the answer of Mary Jane Gulley to plaintiff's complaint; that said attorneys performed services in the gathering of the evidence submitted to the Court herein on behalf of said Mary Jane Gulley and in support of her claim; that they represented her and acted as her attorneys and counselors in all proceedings before this Court in this action, including the trial of the case.

### Conclusions of Law

From the foregoing facts the Court concludes:

1. That on or about January 29, 1947, Wallace Phillip Gulley first manifested his intention to change beneficiaries under the National Service Life Insurance certificate issued to him July 1, 1943, that is, to make Mary Jane Gulley, his wife, beneficiary instead of Betty Gulley, his mother, who was originally designated as beneficiary in said certificate.

2. That on February 5, 1947, said Wallace Phillip Gulley took affirmative action evidencing an exercise of his right to change beneficiary by filing, on said date, with Headquarters Squadron, United States Marine Corps Air Station, El Toro (Santa Ana), California, his "Confidential Statement" containing among other matters the following:

"11. I hold the following insurance policies:

(1) (Company): NSI. (Amount): 10,000.  
(Beneficiary): Mrs. Wallace P. Gulley."

3. That the defendants, Mary Jane Gulley, now Mary Jane Wauson, and the United States of America, are entitled to judgment and that judgment herein should be entered as follows:

A. Adjudging and decreeing that plaintiff Betty Gulley take nothing by her complaint on file herein;

B. Adjudging and decreeing that said Mary Jane Gulley is the beneficiary in said policy of National Service Life Insurance of Wallace Phillip Gulley, deceased, and that she have all the proceeds from said policy of life insurance including attorney's fees as hereinafter indicated;

C. Adjudging and decreeing that each party pay its own costs herein incurred.

4. That defendant Mary Jane Gulley's attorneys are entitled to fees for their services in this action in an amount to equal ten (10) per centum of the amount recovered and to be paid by the Veterans' Administration out of the payments to be made under the judgment herein at a rate not exceeding one-tenth of each of such payments until paid.

Let Judgment Be Entered Accordingly.

Dated: This 16th day of December, 1953.

/s/ ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed December 16, 1953.



United States District Court for the  
District of Nevada

Case No. 867

BETTY GULLEY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA and  
MARY JANE GULLEY, also known as  
MARY J. GULLEY,

Defendants.

JUDGMENT

Pursuant to, and in accordance with the opinion, findings of fact and conclusions of law which were filed and entered of record in the above-styled cause, on December 16, 1953, finding the issue against the plaintiff and in favor of the defendant, Mary Jane Gulley (now Mary Jane Wauson, by remarriage), it is this 29th day of January, 1954,

Ordered, Adjudged and Decreed:

1. That the plaintiff, Betty Gulley, do have and recover nothing of and from the defendant, the United States of America, under the \$10,000 policy of National Service Life Insurance involved in this litigation, identified as Policy No. N-12 173 160.

2. That the defendant, Mary Jane Wauson, as the last designated beneficiary of the said policy of insurance, do have and recover of and from the defendant, the United States of America, the death benefits thereof, the same to be paid to her by the Veterans' Administration in accordance with the

terms of the National Service Life Insurance Act of 1940, as amended, and the applicable administrative regulations.

3. That there be deducted by the defendant, the United States of America, an amount equal to ten per centum (10%) of the total amount remaining to be paid under the policy, the said ten per centum (10%) to be deducted from any and all payments on the policy, whether monthly or otherwise, as attorneys' fees for the attorneys representing Mary Jane Wausnn in this action, namely, Oliver C. Custer, Esq., whose address is 220 S. Virginia Street, Reno, Nevada, and Ridley C. Smith, Esq., whose address is Santa Ana, California; said payment for attorneys' fees to be paid directly to said Oliver C. Custer, Esq. and by him to be apportioned between himself and Ridley C. Smith, Esq. as they have agreed or may agree.

/s/ ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed January 29, 1954.

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

To Amos P. Dickey, Clerk of the above-entitled Court:

Notice Is Hereby Given that Betty Gulley, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 16th day of December, 1953.



Dated February 13, 1954.

/s/ ROBERT R. GILL,  
Attorney for said Appellant.

[Endorsed]: Filed February 15, 1954.

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[Title of District Court and Cause.]

SECURITY FOR COSTS ON APPEAL

To Amos P. Dickey, Clerk of the above-entitled  
Court:

There is deposited with you herewith in behalf of Betty Gulley, appellant, by Guy A. Gulley and Betty Gulley, husband and wife, Cashier's Check No. 51180 of The Ely National Bank, Ely, Nevada, in your favor for the sum of Two Hundred Fifty Dollars, dated February 1, 1954, she having filed herein a Notice of Appeal from the judgment of the Court made and entered on the 16th day of December, 1953, in the above-entitled action.

The condition of the deposit of said sum is that the said appellant will pay all costs assessed against her on the said appeal or on a dismissal thereof not exceeding Two Hundred Fifty Dollars, the sum on deposit herein.

Dated February 13, 1954.

/s/ ROBERT R. GILL,  
Attorney for Plaintiff and  
Appellant.

[Endorsed]: Filed February 15, 1954.

In the United States District Court,  
for the District of Nevada

No. 867

BETTY GULLEY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA and  
MARY JANE GULLEY, Also Known as  
MARY J. GULLEY,

Defendants.

Before: Hon. Roger I. Foley,  
Judge.

#### TRANSCRIPT OF PROCEEDINGS

Be It Remembered, that the above-entitled matter came on regularly for trial before the Court sitting without a jury at Carson City, Nevada, on Monday, the 22nd day of June, 1953.

#### Appearances:

ROBERT R. GILL, ESQ.,  
Attorney for Plaintiff.

JAMES W. JOHNSON, JR., ESQ.,  
Attorney for Defendant United States of  
America.

OLIVER C. CUSTER, ESQ. and  
RIDLEY C. SMITH, ESQ.,  
Attorneys for Defendant Mary Jane Gulley.

GUY WILLIAM GULLEY

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Gill:

Q. Will you state your full name, Mr. Gulley?

A. Guy William Gulley.

Q. And what is your relationship to Eddy Gulley?  
A. Brother. He is the older son.

Q. Oldest of the family?

A. Oldest of three boys.

Q. And Wallace Phillip Gulley was your brother?  
A. Yes.

Q. You knew him, of course? A. Yes.

Q. Will you state, to the best of your recollection, the last time you saw Wallace alive?

A. The last time I saw Wallace alive, sir, was in El Toro, after being released from the service in 1947; I was home for a few days.

Q. Who was released from the service?

A. I was, and a few days later my brother arrived home on leave on Mother's Day and that was the first time I had seen him in several years. I last seen him in New River, North Carolina three years before.

Q. This occasion was in North Carolina where you saw him last?  
A. No, Santa Ana.

Q. Well, you may give it in proper sequence. I may be confused.

A. The last time I seen Wallace was in Santa Ana.

(Testimony of Guy William Gulley.)

Q. And that was in 1947 you said?

A. Yes, sir. [2\*]

Q. And you refer to Mother's Day?

A. Yes.

Q. The month of May, 1947?

A. Yes, sir.

Q. State whether or not, on that occasion, you had any conversation with your brother relative to his insurance. Answer yes or no on that.

A. Well, I don't quite understand, sir.

Q. Will you state whether or not, on the occasion when you saw your brother at Santa Ana, California, or about that time, there was any conversation between you about his insurance?

A. Yes, sir.

Q. What was the substance of that conversation? How did it come up?

A. Well, sir, on my brother's arrival home, he talked me into returning to Santa Ana for a small vacation, which I figured I rated at that time. Therefore my brother and I—I preceded him by twenty-four hours to Santa Ana. I left on Sunday night, which I believe was the day after Mother's Day, and proceeded to Las Vegas, at which time I joined my brother. I met him there and we proceeded to Santa Ana by bus. We had various types of conversation on the bus and mostly about the marital relations with my present wife, from whom I was anticipating a separation.

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Guy William Gulley.)

The Court: Your present wife? [3]

A. Yes, sir.

Q. And did the topic of insurance come up?

A. It eventually did.

Q. In your connection?

A. Yes, sir. I was contemplating a separation from my wife and my brother asked me what I was going to do about Helen and I told him that due to her conduct, I was going to leave her as little as possible, at which time the insurance came into the picture and I held this policy of insurance——

Q. What was your military service?

A. Approximately nine years.

Q. In what branch?

A. United States Marine.

Q. The same your brother served in?

A. Yes, sir.

Q. Proceed.

A. Well, the conversation came up, as I said, about my relations between my wife and I and I said I would leave just what little I could and he asked me about my boy, who was at that time a year or so old. Anyway, the insurance came up and he asked me about the ten thousand dollar policy and I told him I was going to have it transferred back to my mother's name, which it was originally in.

Q. Then you had ten thousand insurance originally to your mother, which you had changed to your wife?

A. Yes, sir. [4]

Q. And you contemplated another change?

A. Contemplated a change.

(Testimony of Guy William Gulley.)

Q. And what further?

A. Well, due to the fact that my mother and father were having difficulties at that time, my father's name came into the picture. My father and my brother didn't get along very well and upon the expiration of his first enlistment they had various words, which resulted more or less in my brother's re-enlisting in the United States Marine Corps and due to his attitude and love for his mother, he stated that in the event—a separation of course came into the matter, and I guess my folks were more or less anticipating that—in the event that the folks were separating, that he was leaving his insurance in his mother's name, due to the fact that she had a home, which she did, and no other source of income.

Q. That was in or about the month of May, 1947?

A. Yes, sir, approximately May.

Q. You spoke about having changed your own insurance while you were in the Marines.

A. Well, sir, I was discharged, on terminal leave at that time.

Q. But when you made the change from your mother to your wife, was that when you were in the service?

A. Yes, sir, that was 1944.

Q. You are then, I presume, more or less familiar with the process of changing? [5]

A. Yes, sir.

Q. And will you state briefly what that process was?

(Testimony of Guy William Gulley.)

A. Well, sir, at that time I was a sergeant and sergeants who are in charge of their platoons, most of them are recruits, they completed basic training, and a lot of those fellows didn't realize the benefits of insurance at that time, so, therefore, non-combats were encouraged to encourage them to take out this NSLI, which we did, of course.

Q. You were unmarried at that time, I presume, when you took it out in your mother's name?

A. Yes, sir.

Q. And subsequently what process did you go through to change to your wife?

A. The process I took, sir, in changing my beneficiary, my policy, I contacted my first sergeant and had official form filled out and I believe that form was made in six copies, five or six anyway. Change of beneficiary on this application was taken before the company first sergeant.

Mr. Custer: I respectfully object to this line of testimony, as being immaterial.

The Court: Well, the objection is a little late. I can't very well entertain an objection to any suggested line of testimony.

Mr. Custer: I object to any further testimony on this line. [6]

The Court: Then make your objections when the questions are propounded.

Mr. Gill: Your Honor, now or later, by this witness or another, I intend to have a form of request for change of beneficiary identified, but I haven't it at hand right now.

(Testimony of Guy William Gulley.)

Q. What, on that occasion, did your brother say—you have said, I think, he had intended to leave his insurance in his mother's name?

A. Yes, sir. My brother was very close to my mother——

Mr. Custer: I object——

The Court: That may go out. It is not responsive.

Mr. Gill: Cross-examine.

Mr. Custer: No cross-examination.

### VIRGINIA BARBEE

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Gill:

Q. Will you state your full name, please?

A. Virginia Pearl Barbee.

Q. Your maiden name was Gulley?

A. Yes.

Q. And Betty Gulley is what?

A. My mother.

Q. And Bill, who just testified, is your brother?

A. My brother.

Q. Are you older or younger than the late Wallace Phillip [7] Gulley?

A. I am the oldest child of the family.

Q. And when was the last time you saw Wallace Phillip Gulley alive?

A. The last time I saw my brother was in May



(Testimony of Virginia Barbee.)

on Mother's Day—excuse me, the day previous to Mother's Day. He arrived on Saturday afternoon, 1947.

Q. That is about the second Sunday in May, is it not, Mother's Day? A. I believe it is.

Q. You don't know the exact date?

A. No, I don't.

Q. And how long did he remain with you in Ely?

A. My brother I saw there Saturday afternoon and I saw him for the last time the following afternoon, which was Mother's Day. It was late afternoon.

Q. Did he come to Ely alone at that time?

A. Yes, he did. His wife was not accompanying him.

Q. Were you a married woman at that time?

A. Yes.

Q. The same marriage you have now or another?

A. No, that was my previous marriage. This is my second. My previous marriage I had three children.

Mr. Custer: I object to that, your Honor, as being immaterial. [8]

The Court: I don't see where it is material.

Mr. Gill: It leads, your Honor, to this insurance matter.

The Court: Well, go ahead; we will see.

Q. What, if any, conversation did you have with Wallace Gulley on that occasion on the topic of insurance?

(Testimony of Virginia Barbee.)

A. Of course, Saturday afternoon was quite an exciting day because——

Mr. Custer: Your Honor, I object. The question is, what was the conversation.

The Court: Well, that will stand.

A. And I did not get to speak with my brother. I was very close to my brother, I believe that he and I were the closest of all the children, and therefore he came to see me at my home, which is separate from my mother's home, on Mother's Day in the late afternoon. We had started talking, of course, about the children, of whom he was very fond, and we were—I had stated I was very sorry I had not had the opportunity to meet Mary Jane. They had been to Ely previously, soon after they were married and I had been out of town, therefore, I had not had the pleasure of meeting her, and I asked my brother if she were ill, that she didn't accompany Wallace to Ely.

Mr. Custer: I object, your Honor, and move all that be stricken as not responsive to the question. The question was, what was the conversation. [9]

The Court: It may go out.

A. I am leading up to the conversation as I saw it.

The Court: Just a minute—it will be stricken. Read the question.

(Question read.)

A. At that time I was having trouble with my own marital affairs——

(Testimony of Virginia Barbee.)

Mr. Custer: That is still objected to.

The Court: Yes, just state what was the conversation by your brother.

A. That is what I am trying to say. I can't just jump in what it was. I am trying to give you a thorough picture, so you will understand. As I said, I was having trouble and had three children. My husband was a former GI——

The Court (Interceding): That isn't an answer to the question. All that is stricken. Listen to the question and answer it, please.

(Question read.)

Mr. Gill: If there is any explanation, maybe we will get it in later.

A. My brother told me he was having trouble with his wife and he did not change his insurance; he had left it the way he had previously made it to my mother, without any contingent.

Q. That was about the second week in May?

A. It was Mother's Day in May. [10]

Q. 1947? A. 1947.

Mr. Gill: You may cross-examine.

Mr. Custer: No questions.

## BETTY GULLEY

the plaintiff, being duly sworn, testified as follows:

## Direct Examination

By Mr. Gill:

Q. Your name is Betty Gulley? A. Yes.

Q. And you are the mother of the late Wallace Phillip Gulley? A. Yes.

Q. And the mother of these two witnesses who have just testified? A. Yes.

Q. How many children have you had altogether, Mrs. Gulley? A. Eight, three sons.

Q. How many of them are living now?

A. All of them.

Q. Except— A. Wallace.

Q. What is your husband's name?

A. Guy Gulley.

Q. And this is the only marriage you have ever had? A. Yes. [11]

Q. Mrs. Gulley, I show you a copy of a type-written paper and I ask you if you have ever seen that before?

A. Yes, I have. It was mailed to me right after—

Mr. Gill: Your Honor, I have shown the witness an application for National Service Life Insurance. It will not be required further and I think might be admitted in evidence. Any objection?

Mr. Custer: No objection.

The Court: It may be admitted in evidence as plaintiff's Exhibit 1.

VETERANS ADMINISTRATION  
Insurance Form 100

PLAINTIFF'S  
EXHIBIT NO. 1

APPLICATION FOR NATIONAL SERVICE LIFE INSURANCE

UNDER SECTION 602 (a) NATIONAL SERVICE LIFE INSURANCE ACT OF 1940 AND REGULATIONS OF THE VETERANS ADMINISTRATION  
WITHOUT REPORT OF PHYSICAL EXAMINATION

Persons who enter the active service in the land or naval forces of the United States after October 8, 1940. Application must be made to the Veterans Administration while in the active service and within 180 days after entrance into such service. NOTE—Persons in the active service on October 8, 1940, and persons who thereafter re-enlist or reenter the active service (immediately following discharge from previous enlistment) or who thereafter are discharged to immediately accept commissions and whose services are continuous, must make application on Insurance Form 100, which requires a complete report of physical examination. USE THE GE TYPE.

NAME IN FULL: (Please print or type) First Middle Last name  
Wallace Phillip GULLEY

HOME ADDRESS: Number Street or rural route County, city, town, or post office State  
971 Lyons Ave. Ely Nev.

I WAS SOLE AT City, town, or post office State Day of month Month Year Age nearest birthday  
Walla Nev. 13th November 1926 18

DATE OF ENTRY INTO PRESENT TOUR OF ACTIVE DUTY 23 Jun 43  
PRESENT ORGANIZATION Rank, grade, or rating. Organization, regiment, station, ship, etc. Pvt. USMC, 3d MC, San Diego, Calif. 504971  
SERIAL NUMBER

DATE OF SEPARATION FROM LAST TOUR OF ACTIVE DUTY. (Use previous active duty, state "none.") None  
ARE YOU NOW DISABLED ON ACCOUNT OF INJURY OR DISEASE? IF SO, STATE DETAILS No

DO I HEREBY APPLY FOR INSURANCE ON THE FIVE-YEAR LEVEL PREMIUM TERM PLAN IN THE AMOUNT OF \$10000  
BY DEDUCTION MONTHLY BY ALLOTMENT MONTHLY PAYMENTS TO BE MADE DIRECT TO VETERANS ADMINISTRATION AS FOLLOWS:  
Monthly Quarterly Semiannual Annual  
\$6.40

ARE YOU NOW CARRYING GOVERNMENT LIFE INSURANCE? (ANSWER "YES" or "NO") No. IF "YES" GIVE AMOUNT OF INSURANCE AND POLICY NUMBER IF AVAILABLE. AMOUNT \$ POLICY NO.  
(No person may carry a combined amount of National Service Life Insurance and U. S. Government Life Insurance in excess of \$10,000 at any one time)

FULL NAME OF BENEFICIARY (If married woman, her own first and middle name and husband's last name must be stated)	Relationship	Amount for each beneficiary	Post-office address (Number and street, city, town, or post office)
Betty Gulley	Mother	\$10000	971 Lyons Ave. Ely, Nev.

Permitted class of beneficiaries: Husband or wife, child, parent, brother or sister of the insured. (See reverse side, Paragraph 4.)  
I REQUEST THAT THE EFFECTIVE DATE of this policy be made the 1st day of JULY 1943. If no date is specified the insurance herein applied for shall become effective as follows:  
a. If the first premium is to be paid by allotment or deduction, the insurance will become effective on the first day of the month following the month in which the application and allotment or authorization for deduction are executed, provided the amount of the premium is deducted from the applicant's active service pay in accordance with the allotment or authorization, or  
b. If the first premium is paid by direct remittance, the insurance will become effective as of the day on which the application and tender of premiums are made and forwarded to the Veterans Administration. (See reverse side, Paragraph 1, for further information as to effective dates of insurance.)  
THE UNITED STATES IS NOT LIABLE FOR DEATH OCCURRING PRIOR TO THE EFFECTIVE DATE OF THE POLICY

I REQUEST THE POLICY BE MAILED TO—Beneficiary (Name) (Please print or type) (Address)  
(A) I WILL AUTHORIZE (Allotment) from my pay for month of JUNE 1943 to cover the monthly premium of \$6.40 on the amount of insurance applied for. (This authorization may be effective during periods of active service only.)  
(B) I enclose herewith remittance payable to the TREASURER OF THE UNITED STATES by Draft Money order Check in the amount of \$ to cover the first premium of \$ as the amount of insurance applied for. (Write above whether monthly, quarterly, semiannual, or annual)

APPLIED AT: San Diego, Calif. ON THE 1st DAY OF JULY 1943

ATTESTED BY: and L. V. GRANVILLE 2nd Lt. USMC, 3d MC, San Diego, Calif. (Applicant sign here. Do not print signature)

NOTE—Penalties for fraud in securing for self or another the issue or payment of insurance: \$1,000 to \$5,000 fine and imprisonment. Insurance will be forfeited for fraud, treason, spying or other specified offenses. (Sections 913, 915, and 919, National Service Life Insurance Act of 1940.)

DO NOT USE THIS SPACE

Effective date: Age Amt. \$ Premium: Mo. \$ Qr. \$ S. A. \$ A \$  
Beneficiary: Reviewer: Policy issued:  
Action taken: Certificate issued:

Endorsed: Filed June 22, 1943.



(Testimony of Betty Gulley.)

Q. Another paper, Mrs. Gulley, do you recognize that?  
A. I do.

Q. What is that?

A. That is his National Service Life Insurance.

Q. This is the original policy?

The Court: Is that the policy?

Mr. Gill: It is the policy itself.

The Court: It may be withdrawn at any time on substitution of photostatic or typewritten copy. Counsel can stipulate.

Mr. Custer: We so stipulate, your Honor.

The Court: Whichever is most convenient to produce, either typewritten or photostatic.

Mr. Custer: No objections.

Mr. Gill: With that understanding, your Honor, we offer [12] in evidence the policy as plaintiff's Exhibit 2.

The Court: It will be admitted in evidence, with permission to withdraw on substitution.

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PLAINTIFF'S EXHIBIT No. 2

The United States of America  
Veterans' Administration  
Washington, D. C.

National Service Life Insurance

Date Insurance Effective: July 1, 1943.

Certificate No. N-12 173 160.

This Certifies That Wallace Phillip Gulley has

(Testimony of Betty Gulley.)

applied for insurance in the amount of \$10,000, payable in case of death.

Subject to the payment of the premiums required, this insurance is granted under the authority of The National Service Life Insurance Act of 1940, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract.

[Seal]      /s/ FRANK T. HINES,  
Administrator of Veterans'  
Affairs.

Countersigned at Washington, D. C.

Date: August 16, 1943.

/s/ M. INGEBRETSON,  
Registrar.

Mrs. Betty Gulley,  
971 Lyons Ave.,  
Ely, Nevada.

Insurance Form 360

[Endorsed]: Filed June 22, 1953.



(Testimony of Betty Gulley.)

Q. I show you another paper, Mrs. Gulley; did you ever see that before?      A. Yes, I did.

Mr. Gill: Your Honor, the witness has identified a printed form for change of beneficiary. The ink and shorthand notations thereon are not part of the exhibit. I can explain those. Your Honor, the lady has identified a small picture of her son which she would rather not offer.

The Court: Let us take care of Exhibit 3 first. Any objection?

Mr. Custer: May I ask the purpose? It is just a blank form.

Mr. Gill: It is to identify a form which was used at that time.

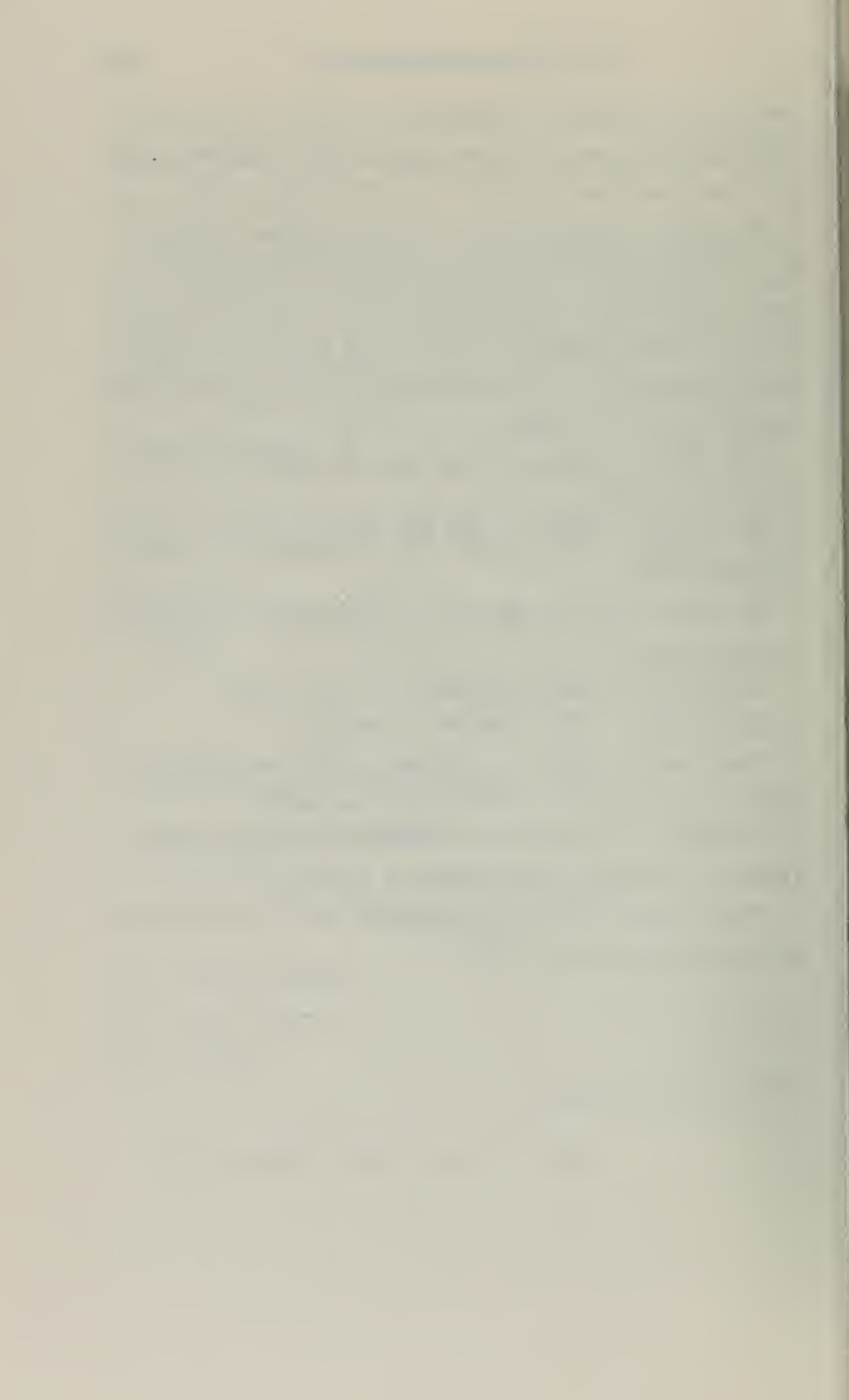
The Court: Just illustrative of the form.

Mr. Custer: We have no objections.

The Court: And I understand the written material, pencil or pen, is not involved here.

Mr. Gill: I could have the witness explain what there is on there. I offer this in evidence, No. 3.

The Court: No. 3 is admitted, for the purpose of showing the form. [13]



44

9FAAB

VETERANS ADMINISTRATION  
Insurance Form 794  
Rev. April 1967

USE A SEPARATE FORM FOR EACH POLICY ON WHICH  
A CHANGE OF BENEFICIARY IS DESIRED

Policy No. K 1,015,956

### CHANGE OF BENEFICIARY—UNITED STATES GOVERNMENT LIFE INSURANCE

I, the undersigned insured, hereby cancel all previous designations of beneficiaries under the above-numbered United States Government life insurance policy and direct that said insurance, which amounts to \$....., be paid from and after my death as follows:

GIVE COMPLETE NAME AND ADDRESS OF EACH BENEFICIARY (Note.—If a married woman, her own fir. name, maiden surname, and husband's last name must be stated)	RELATIONSHIP	AMOUNT OF INSURANCE TO BE PAID TO EACH BENEFICIARY
<p style="text-align: center;">NO <u>867</u></p> <p style="text-align: center;">EXHIBIT NO. <u>3</u></p> <p style="text-align: center;">F. I. C. 100-10000</p> <p style="text-align: center;"><i>[Signature]</i></p>		

Signed at ..... on this, the ..... day of ....., 19.....

Signature of witness ..... Signature of insured .....

(Do not print)

Address ..... Address .....

(street and number) (street and number)

(Post office and State) (Post office and State)

This form, when completed, should be immediately forwarded WITH THE POLICY to the Veterans Administration for endorsement of change of beneficiary.

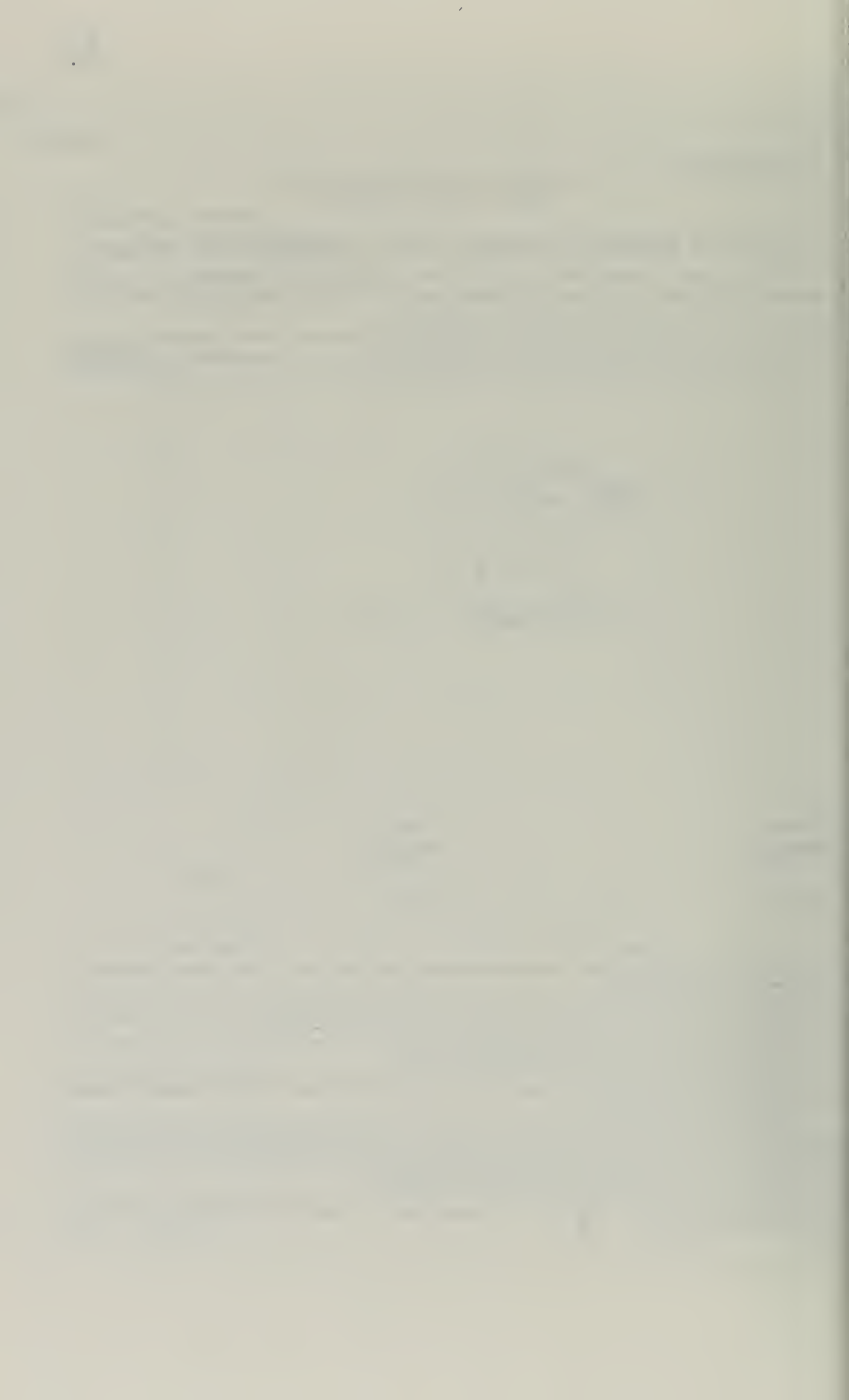
Signature of insured should be in ink and witnessed by a responsible and disinterested person. The rank and organization of the insured and the witness should be stated if the insured is in the military or naval service.

The insured, under a United States Government life insurance policy, may designate any person, firm, corporation, or legal entity as beneficiary under his policy, either individually or as trustee.

A change of beneficiary may be made by the insured at any time and without the knowledge or consent of the previous beneficiary, except that no change of beneficiary may be made by last will and testament. An original designation of beneficiary may be made by last will and testament.

If no beneficiary be designated by the insured for United States Government life insurance, either in his lifetime, or by his last will and testament, or if the designated beneficiary does not survive the insured, then there shall be paid to the estate of the insured the present value of the remaining unpaid monthly installments; or if the designated beneficiary survives the insured and dies before receiving all of the installments of insurance payable and applicable, then there shall be paid to the estate of such beneficiary the present value of the remaining unpaid monthly installments.

The insured cannot assign his United States Government life insurance. The insurance shall be exempt from all taxation, and from the claims of creditors of the insured or the beneficiary, except any claims of the United States arising under any of the laws relating to veterans.



(Testimony of Betty Gulley.)

Mr. Gill: Yes, showing the form.

Q. Were you acquainted with your son's former wife, Mary Jane?

The Court: Have you offered a photograph?

Mr. Gill: The lady preferred not to put this in evidence.

Q. Were you acquainted with your son's former wife, Mary Jane Gulley?

A. I met her once before his death.

Q. Approximately when was that?

A. Well, I couldn't say, but it was some time early in the spring of '47. I couldn't give the exact date.

The Court: That is the only time you met her?

A. That is the only time.

The Court: And when was it?

A. In the spring of '47.

Q. And where was that?

A. At my husband's home.

Q. In Ely, Nevada? A. Yes.

Q. And what was the next occasion when you saw her?

A. When I was called to California when he was killed. The next time I saw my son was when I was called to California.

Q. You had received word of his injury and you went there? A. Yes, I was notified.

Q. And where did you see your daughter-in-law then?

A. Well, I saw her at the place where they were rooming, a [14] Mrs. Palmer's.

(Testimony of Betty Gulley.)

Q. In what town?           A. In Santa Ana.

Q. Where did you go on that occasion? What was your point of arrival?

A. At the naval hospital in Long Beach. I was to meet Mary there.

Q. Was there some prearrangement to meet her?

A. Yes, the night she called me and told me of Wallace's critical injury.

Q. Was she there when you arrived?

A. She was not.

Q. Did you meet her later in Santa Ana?

A. Yes, we went down to Mrs. Palmer's.

Q. On the same day?           A. On the same day.

Q. Did you find her there on your arrival?

A. No, she was up town with a girl friend.

Q. But you did eventually meet her?

A. Yes.

Q. Was that the occasion when Mary Jane returned to Nevada for the funeral?           A. Yes.

Q. Do you recall any discussion with the hospital authorities, or someone, as to an escort for the [15] body?

A. Yes, they told my husband that he was allowed an escort.

Mr. Custer: Your Honor, I object, I don't see the materiality.

The Court: The proponent in this case is Neil Baker.

Mr. Custer: It refers to a deposition not offered in evidence, but we will offer it, but I don't see

(Testimony of Betty Gulley.)

what materiality this has to the point before the Court.

Mr. Gill: It is premature.

Q. Was anything said on that occasion about an escort for the body?

The Court: Objection sustained.

Mr. Gill: On that line of questioning?

The Court: On that question. I don't rule on lines of questioning.

Mr. Gill: I will ask the Court's pardon.

Q. Now you said that Mary Jane returned to Nevada for the funeral? A. Yes.

Q. How did she come up?

A. She came up with my husband and my son, William Gulley.

Q. And how did the body come up?

A. The body was shipped to Caliente with Neil Baker as escort.

Q. Had you ever met Neil Baker before?

A. No, I never met Neil Baker until Saturday afternoon when he arrived with the body. [16]

Q. Did you hear any conversation on that occasion between your husband and Neil Baker?

Mr. Custer: Objected to as calling for hearsay, not binding.

The Court: Just answer that yes or no.

Q. Did you hear a conversation between your husband and Neil Baker? A. Yes.

Q. Now, subject to objection, what did your husband ask Neil as to his relationship with his son?

Mr. Custer: Your Honor—

(Testimony of Betty Gulley.)

The Court: Objection sustained.

Mr. Gill: That goes out.

Q. Did you or your husband make any suggestion as to an escort for the body?

A. No, we did not. We were informed there would be one marine to escort him home.

Q. Do you know who named Neil Baker?

A. Mary Jane named Neil Baker.

Mr. Gill: Cross-examine.

Mr. Custer: No cross-examination.

Mr. Gill: That, your Honor, is plaintiff's case in chief.

Mr. Custer: Your Honor, please, at this time I ask the Court to give me the deposition of Neil Baker, which has been filed. Your Honor, at this time I would like to open the [17] deposition and offer it in evidence and read it to the Court. It was taken pursuant to stipulation.

Mr. Gill: No objection. My objections were reserved, except as to the form of the question.

The Court: The deposition may be opened. You want to read the deposition and make objections to the deposition as propounded to you?

Mr. Gill: Yes, sir.

The Court: Very well.

Mr. Custer: May it please the Court, the original stipulation for taking the position is in, together with the questions. I shall read your Honor the stipulation, omitting the title of the court and cause. (Reads "Stipulation for Taking Deposition.") The questions then, direct and cross, are as follows:



DEPOSITION OF NEIL D. BAKER

“No. 1. What is your name?

“A. Neil D. Baker.

“No. 2. Where do you reside?

“A. Marine Corps Air Station, El Toro, Santa Ana.

“Q. Were you acquainted with Wallace P. Gulley during his lifetime?

“A. Yes, I was.

“Q. When did you first become acquainted with him?

“A. Well, in September, 1946.

“No. 6. What was Wallace P. Gulley's occupation when [18] you first knew him?

“A. He was a Marine.

“No. 7. Did you ever have any conversation with Wallace P. Gulley concerning National Service Life Insurance?

“A. Yes, I did.

“No. 8. Please state when and where you had this conversation.

“A. It was in the back room of the Staff NCO at the Marine Base, which was our quarters back there and it was in June of '47. It was right after I came off of furlough, that's how I remember that, and the subject of insurance was brought up, I believe I brought it up, and I asked Wally if he had had his insurance changed and he said, 'Yes,' that he had had his insurance changed to his wife's name.

“No. 9. Who, if anyone else, was present?

“A. There was no one else present except Wally and I.

(Deposition of Neil D. Baker.)

“No. 10. What did you say to him?”

“A. Well, I asked him about his insurance, we brought that up some way, I don’t know just how it came up but I had asked him if he had his insurance changed over to his wife’s name, as I said before.

“No. 11. What did he say to you?”

“A. He said yes, he had had the insurance changed over to his wife’s name.

“No. 12. Did Wallace P. Gulley ever make any statements [19] to you as to who was the beneficiary of his National Service Life Insurance?”

“A. Yes, he did, he stated it was his wife.

“No. 13. When and where did he make the statement, if any, and who was present?”

“A. It was at the Marine Corps Air Station in the back room of the Staff NCO Club that was out at the Base and we were in our quarters in a back room there where we were quartered.

“No. 14. What did he say?”

“A. He said that he had made the insurance out to his wife, he had changed it over to his wife’s name.

“No. 15. Did you ever fill out a Confidential Statement?”

Mr. Gill: Your Honor, we object to that question as immaterial. The witness is not a party to the suit, not involved in it in any way and I can’t see any point in whether he had or he had not made a confidential statement.

(Deposition of Neil D. Baker.)

The Court: This deposition was taken at the instance of each side?

Mr. Custer: At the instance of the defendant, your Honor.

The Court: Let me have that question.

“Did you ever fill out a Confidential Statement?

“A. Yes, I did.

“No. 16. When and where did you fill this [20] out?”

The Court: A confidential statement for the deponent?

Mr. Custer: Yes.

The Court: I can't see where it is material.

Mr. Gill: I object to that question.

The Court: I have ruled. I can't see where it is material.

Mr. Gill: I ask the answer be stricken.

The Court: Let me have the question again.

(Question read.)

The Court: And the answer?

Mr. Custer: “Yes, I did.”

The Court: And the next question?

Mr. Custer: “When and where did you fill this out?”

The Court: I ruled that as immaterial.

Mr. Gill: That objection goes to each.

Mr. Custer: We will omit that answer and proceed with question 17.

“No. 17. Do you know, as a fact, whether or not

(Deposition of Neil D. Baker.)

Wallace P. Gulley filled out a Confidential Statement?"

Counsel has no objection to that question?

Mr. Gill: No.

Mr. Custer (Continuing): "A. I believe that he filled out one the same time that I did because we were working in the same department there, and they told us to fill them out and I am pretty sure that we filled them out at the [21] same time."

Mr. Gill: Just a moment. I object to that answer as not responsive to the question. The question was, do you know his affairs——

The Court: Let it stand.

"No. 18. Do you recall the date, when and where he did this, if you know?"

"A. I believe it was in February, 1947."

Mr. Gill: Same objection.

The Court: Objection overruled.

Mr. Custer (Continuing): "No. 19. Were you and Wallace P. Gulley working at the U. S. Marine Base at El Toro, California, on February 5, 1947?"

"A. At the Staff NCO Club, at the same Base.

"No. 20. Did Wallace P. Gulley ever tell you how much insurance he had?"

"A. Yes, he said he had ten thousand dollars' worth of insurance, he had ten thousand dollars' worth of National Service Insurance.

"No. 21. When and where did he tell you?"

"A. We were in the back room at the Staff NCO Club, Marine Air Station, El Toro.

(Deposition of Neil D. Baker.)

“No. 22. Did he tell you who the beneficiary was of this policy?”

“A. Yes, he did, he said his wife, Mary Gulley, was [22] the beneficiary.

“No. 23. If your answer to this question is yes, please state the name of the person to whom his insurance was made out, if he so stated.

“A. Mary Gulley.

“No. 24. Did he ever tell you whether he had more than one kind of insurance?”

“A. No, he didn't.

“No. 25. Did he tell you whether he had insurance other than the National Service Life Insurance?”

“A. No, he didn't.

“No. 26. If so, did he give you the name of the beneficiary or the amount of insurance?”

“A. No.”

Cross-interrogatories. These were propounded by Mr. Gill.

Mr. Gill (Reads):

“Cross-Interrogatories

“No. 1. What was your grade or rating in the armed service at the time you have said you first became acquainted with Wallace P. Gulley?”

“A. I was a PFC at the time, Private First Class.

“No. 2. What was his grade or rating at that time?”

“A. Wally was a PFC also.

(Deposition of Neil D. Baker.)

“No. 3. If you have stated in response to a direct interrogatory that you had a conversation with Wallace P. [23] Gulley concerning National Service Life Insurance, please state how that conversation came up, that is, who suggested the topic.

“A. Well, we were just sitting around in our quarters at the Staff NCO Club and I brought the subject up about insurance, naturally I meant Service Insurance, and I had asked Wally if he had had his insurance changed over to his wife’s name, and Wally said yes, he had the insurance changed over to his wife’s name, Mary Gulley.

“No. 4. Are you acquainted with the defendant Mary Jane Gulley, also known as Mary J. Gulley?

“A. Yes, I am.

“No. 5. If so, when did you first become acquainted with her?

“A. I believe it was near the end of ’46.

“If so, how intimate is that acquaintance at the present time?

“A. Well, I haven’t seen Mary since Wally’s funeral, has been over three years.

“No. 7. State whether or not you have ever met any other members of the family of the late Sergt. Wallace P. Gulley?

“A. I met them in ’47 when I took Wally’s body home, I escorted his body home, I met his mother, his father, and his brother and three of his [24] sisters.

“No. 8. If so, state who they were.

“A. I just answered that question. The only

(Deposition of Neil D. Baker.)

one I knew was Bob, that is his brother, I can't remember the rest of their names.

“No. 9. If you have answered that you did meet these other members of his family, state when, where and on what occasion you met them.

“A. I have already answered that one, I said, ‘I took Wally's body home and that's where I met them.’ ”

Mr. Custer: Your Honor, at this time we would like to offer this in evidence.

The Court: It will be admitted in evidence, modified, of course, by the ruling by the Court.

(Short recess.)

11:17 A.M.

MARY JANE WAUSON

the defendant, being duly sworn, testified as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your name?

A. Mary Jane Wauson.

Q. Are you a defendant in this action?

A. I am.

Q. You were formerly the wife of Wallace Phillip Gulley? A. Yes.

Q. And when and where were you married? [25]

A. We were married in Downey, California, on October 15, 1946.

Q. And Mr. Gulley died August 13, 1947?

A. Yes.

Q. And I believe we have stipulated you remar-

(Testimony of Mary Jane Wauson.)

ried on December 29, 1950?           A. I did.

Q. Now on the date of his death, you were still married to Wallace?           A. I was.

Q. And after you married in 1946 did you have occasion to discuss insurance with your then husband?           A. I did.

Q. Would you state the circumstances, when and where this conversation occurred, who was present?

A. It was at the time I changed the beneficiary on my own insurance policy from my mother to my husband Wallace.

Q. You had an insurance policy?

A. I did.

Q. I show you a life insurance group policy No. 752100, certificate No. 1000-27520, issued by the Occidental Life Insurance Company of California, bearing date of January 29, 1947. Does that refresh your memory?           A. Yes, it does.

Mr. Smith: I offer this in evidence.

Mr. Gill: Objected to, your Honor, as immaterial. There [26] is no contention that there was a bargain between these people that one was to make over her insurance in return for an assignment from the other. This is only two thousand dollars, the other was ten thousand. Whatever transaction there was between them, I can't see it has bearing in this case.

Mr. Custer: Your Honor, I believe it would be admissible for showing course of conduct on the part of the parties and also in fixing the time that they had this discussion.



(Testimony of Mary Jane Wauson.)

Mr. Smith: It is for that purpose it is offered, your Honor.

Mr. Gill: Is the assignment on that policy?

Mr. Smith: This policy is for two thousand dollars, counsel, and it shows beneficiary payable to Gulley, Wallace P., husband, as beneficiary.

Mr. Gill: And the date?

Mr. Smith: Dated January 29, 1947.

The Court: It may be admitted in evidence as defendant's Exhibit B.

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DEFENDANT'S EXHIBIT B

Gift Life Insurance

Group Policy No. 752100 Certificate No. 1000-27520

Occidental Life Insurance Company  
of California

Home Office—Los Angeles

This is to Certify that under and subject to the terms and conditions of Group Policy No. 752100, issued and delivered to

Bank of America  
National Trust & Savings Association

(Herein called the Employer)

by Occidental Life Insurance Company  
of California

(Herein called the Company)

the life of Gulley, Mary Jane (herein called the

(Testimony of Mary Jane Wauson.)

Employee) is insured for the sum of Two Thousand Dollars payable to Gulley, Wallace Phillip—Husband, as beneficiary, if death shall occur while an employee of the Employer and while insured under said policy. Such amount shall be paid either in one sum or in a fixed number of instalments as set forth in the “Optional Settlement” provisions contained elsewhere herein.

The beneficiary may be changed, in accordance with the “Change of Beneficiary” provision set forth elsewhere herein, by the employee at any time while the insurance on his or her life is in force, by notifying the Company through the Employer.

The insurance provided for by said policy terminates with the termination of employment with the said Employer, or as otherwise provided in said policy. In event of termination of employment the employee may elect to continue the insurance in accordance with the “Conversion Option” given elsewhere in this certificate.

This certificate is subject to the provisions recited on the second page hereof.

OCCIDENTAL LIFE INSURANCE COMPANY  
OF CALIFORNIA.

/s/ DWIGHT L. CLARKE,  
President.

Dated: January 29, 1947.

[Endorsed]: Filed June 22, 1953.

(Testimony of Mary Jane Wauson.)

Q. Now with the policy now as our exhibit, does that refresh your memory of the conversation you had with your husband on or about that time?

A. Yes, at that time he told me he was also going to change his insurance policy over to me as beneficiary.

Q. And this policy had been previously in favor of some one else? [27]

A. Yes, in favor of my mother.

Q. Now subsequent to this time, did you have occasion to discuss insurance again with your husband?

A. Yes, I did. It was several months later, approximately about two months before his death. At that time I was working in the Bank of America and the husband of one of the girls I worked with was an insurance salesman and she told me about this 20-year endowment policy and I talked it over with my husband when we went out to dinner. We were taking a walk and I told him I was thinking about taking out this insurance policy and he said he thought we were paying enough premium for insurance and without thinking I turned to him and said, "Well, you don't have any insurance" and he turned to me and said, "I do, I have ten thousand dollars in government insurance in your name." And after that I decided not to take out any insurance because his premium was \$6.40 a month and he wasn't making very much in the Marine Corps and we really couldn't afford any more.

Q. You stated that he said he was paying too

(Testimony of Mary Jane Wauson.)

much money for insurance. Did he state how much he was paying?

A. He was paying \$6.40 a month for the premium for his insurance policy.

Q. That is for the National Service Life Insurance policy? A. Yes.

Q. Did he make that statement at the same time he talked to [28] you that you just related?

A. He did.

Q. And that was on this evening you walked together? A. Yes, it was.

Q. Now after his death did you go to any agency or anyone to seek advice?

A. I did. I went to the Veterans Administration in Santa Ana.

Q. What did you do there?

A. They gave me forms to fill out for his death benefits, in which was a form to apply for his National Service Life Insurance.

Q. And you filled those out, did you?

A. I did.

Q. What happened after that?

A. It was approximately a month after that I went to El Toro Marine Base with my attorney, Mr. Smith, Mr. Ridley Smith, was going to see my husband's records there and while we were there Captain Kleager in charge of the Base brought a sealed envelope from a vault in another room, which contained my husband's confidential papers, of which I knew nothing about at the time. He opened it in front of Mr. Smith and myself and it was his

(Testimony of Mary Jane Wauson.)

confidential statement and in that he stated that I was the beneficiary of his life insurance policy. I didn't know anything about it before that. [29]

Mr. Smith: If your Honor please, I have in my hand the confidential statement of Mr. Gulley, Wallace Phillip, dated February 7, 1947, which was filed in this court on June 22, 1951, as defendant's Exhibit A.

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DEFENDANT'S EXHIBIT A

U. S. Marine Corps Air Station  
El Toro, California

Date: 5 February, 1947.

Confidential Statement

Note: All Information Will Be Treated as Strictly Confidential. Envelope Will Be Opened Only in Case of Death or Serious Injury. This Form May Be Reclaimed Unopened, Upon Your Detachment. If Unclaimed, the Envelope and Form Will Be Destroyed Unopened.

1. Name: (Surname) Gulley, (First) Wallace, (Second) Phillip. (Rate): Corp.
2. Permanent Address: 971 Lyons Ave., Ely, Nevada.
3. Next of Kin (other than wife): Mrs. Guy A. Gulley. Address: (Street) 971 Lyons Ave., (City) Ely, Nevada, (State) Nevada.

(Testimony of Mary Jane Wauson.)

4. Name of Wife: Mrs. Mary Jane Gulley. Address: (Street) Downey Ave., (City) Downey, (State) California.
5. Marriage Certificate Located at: Long Beach, California.
6. Name of Children:.....
7. Birth certificates located at: Wells, Nevada.
8. Notify the following in case of death or serious accident:
  - (1) (Name) Mrs. Mary Jane Gulley, (Relationship) Wife, (Address) Room 20, Downey Hotel, Downey, Cal.
  - (2) (Name) Mrs. Guy A. Gulley, (Relationship) Mother, (Address) 971 Lyons Ave., Ely, Nevada.
  - (3) (Name) .....  
(Relationship) .....  
(Address) .....
9. In case of death I desire that one of the following persons assist in inventorying my effects and notify next of kin. (Note: Next of kin will be notified by dispatch if not residing in immediate vicinity of station.)  
Name: Edward G. Smith. Rank: M/Sgt.  
Name: Charles L. Koster. Rank: T/Sgt.
10. Lawyer, Administrator or Executor:.....  
..... (Address).....

(Testimony of Mary Jane Wauson.)

11. I hold the following insurance policies:
  - (1) (Company) NSI, (Amount) \$10,000.  
(Beneficiary) Mrs. Wallace P. Gulley.  
Location of Policy: .....
12. Member of Navy Mutual Air? No.
15. I have accounts at the following banks:
  - (1) \$340.00 at the Security First National Bank, Downey, California.
18. (Your Religion): Catholic. (Disposition of Body): Burial to take place in Ely, Nev.

/s/ WALLACE P. GULLEY,  
(Signature.)

Experience has proven all the above information absolutely necessary. Answer all questions, sign, and enclose form in envelope marked with your name, rate, and the words "Confidential Statement." "To be opened only in case of death or serious illness."

---

Mr. Custer: Your Honor will recall at the time of this pretrial conference that this statement was admitted in evidence at that time, two years ago today.

Q. I show you defendant's Exhibit A, Mrs. Wauson, and ask you when was the first time you ever saw that?

(Testimony of Mary Jane Wauson.)

A. The first time I saw that was when I was at the El Toro Marine Base with Mr. Smith after my husband's death.

Q. Now I will ask you to examine the signature. Is that the signature of your husband?

A. It is.

Q. Mrs. Wauson, you have been a bank teller for a good many years?

A. I was a bank bookkeeper and teller.

Q. And you are familiar with persons' signatures? A. I am.

Q. And particularly familiar with your husband's signature? A. Yes.

Q. Now as a matter of fact, when we went to this Base, it was for the purpose of obtaining other records, is that correct?

A. That is correct. [30]

Q. And tell us what was done when that statement was first shown to you?

A. This Captain Kleager opened the confidential statement and he offered it to me and my attorney, Mr. Smith, objected and said that he thought that they should have copies made of it before it was presented to me and that was done and later on they mailed this confidential statement to me, after copies were made at El Toro Marine Base.

Q. And who was present at the time this was opened, this envelope with this confidential statement?

A. Captain Kleager, Mr. Smith and myself were present.



(Testimony of Mary Jane Wauson.)

Q. Captain Kleager, did he prepare copies of that in your presence?           A. He did.

Q. How was that done?

A. It wasn't a copy of it exactly. He had some fellow from the Base, I don't know his rank, come in and type out a copy of it and later on there were photostatic copies made of it, before I received the original confidential papers.

Q. Now, Mrs. Wauson, that was on the 13th day of October, 1947, when you made this discovery?

A. Yes.

Q. That was the 13th of October you said that we were at the Base?           A. It was. [31]

Q. 1947?           A. Yes.

Q. And at that time we were investigating facts in connection with the litigation you were trying to prosecute in connection with your husband's death against the party who ran into your husband?

A. Yes.

Q. Now as soon as these copies were made, as I understand they were typed by an orderly in the presence of the custodian and yourself and myself?

A. Yes.

Q. And at that time they gave you a copy, did they, a typewritten copy, do you remember?

A. I don't believe they did. I don't remember.

Q. And then after you went home, did you write a letter to the Veterans Administration?

A. Yes, I did.

Q. Was that on the same day?           A. Yes.

Mr. Johnson: This is the original Administra-

(Testimony of Mary Jane Wauson.)

tion's file. We have no objection to having it go into evidence if a copy is substituted.

The Court: If it is offered in evidence, it will be with the understanding on substitution of photostatic copy or other copy it may be returned. [32]

Q. I show you letter dated October 13, 1947, addressed to the Veterans Administration, Washington 25, D. C., and ask you, is that your signature?

A. Yes, it is.

Mr. Smith: At this time, your Honor, we offer this letter of October 13, 1947, from Mrs. Gulley to the Veterans Administration as our next exhibit.

The Court: Any objection to it, Mr. Gill?

Mr. Gill: No objection.

The Court: It may be admitted in evidence as defendant's Exhibit C.

Mr. Johnson: Your Honor, this is with the understanding that it may be removed when copy is substituted.

The Court: Yes, it may be returned to the custodian on substitution of copy, Exhibit C.

Mr. Smith: No objection. Your Honor, please, I would like to read this into the record.

(Testimony of Mary Jane Wauson.)

DEFENDANT'S EXHIBIT C

(Reads.)

“October 13, 1947.

“Veterans Administration,  
Washington 25, D. C.

“In Reply to: 8BDAB

“Gentlemen:

XC 6 245 952

Gulley, Wallace Phillip

“Replying to your letter of September 30, 1947, concerning my claim for National Service Life Insurance by reason of my late husband whose name is above given, please be advised [33] that I have this date asked the U. S. Marine Corps to send you a certified copy of my husband's Confidential Statement, which is still in their files. I saw it today myself for the first time. It is dated February 5, 1947, and in it he states under item 11, Sub. 1, that he holds NSI \$10,000 and names me beneficiary. I know his handwriting and the above statement is over his signature.

“He had previously told me that he had made the change in the beneficiary over to me on the National Service Life Insurance policy. We had talked about it and I made my insurance over to him at the same time. I do not understand why a regular form did not reach the proper office.

(Testimony of Mary Jane Wauson.)

“Please let me know what I am to do next about the matter.

“I have had to move from Santa Ana so please address me General Delivery, Downey, California, until I am able to obtain a permanent address.

“Yours very truly,

“/s/ MRS. MARY J. GULLEY,

“Mrs. Mary J. Gulley,

“General Delivery,

“Downey, California.”

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This letter, on the reverse side, appears to have been received [34] October 16, 1947; some marks I don't understand, also received Adjudication Unit A October 27, 1947, National Service Life Insurance Claims Division.

Q. Now, Mrs. Gulley, while you were there did you request the officers at the Marine Corps to send a copy of the confidential statement to any one?

A. I requested them to send a copy to the Veterans Administration in Washington.

Q. I have in my hand, Mrs. Gulley, from Headquarters Squadron, U. S. Marine Corps, Station El Toro, Santa Ana, California, over the signature of Frank C. Kleager for the commanding officer G. W. Nevils, a paper and attached to it was a typewritten copy of the confidential statement, and ask you if you ever saw that typewritten copy of the confidential statement?      A. Yes, I did.

Q. And I will ask you if you saw Captain Klea-

(Testimony of Mary Jane Wauson.)

ger sign his name to that?      A. I did.

Q. And that was done on the 13th of October, 1947?      A. Yes.

Q. In your presence?      A. Yes.

Q. And the presence of myself?      A. Yes.

Q. And the presence of Captain Kleager? [35]

A. Yes.

Q. And the orderly who typed it?      A. Yes.

Mr. Gill: No objection.

The Court: It may be admitted in evidence, Exhibit D.

Mr. Johnson: Your Honor, do I understand all these exhibits may be returned?

The Court: They may be returned to the custodian on substitution of photostatic or typewritten copies.

Mr. Smith: So stipulated, your Honor. Your Honor please, for the purpose of the record, I will simply read the letter:

(Testimony of Mary Jane Wauson.)

EXHIBIT D

“Hdqts. Squadron,

“U. S. Marine Corps Air Station,

“El Toro (Santa Ana), Calif.

“KV40/L13/GWN:hen

“Serial 748-12,

“13 Oct. 47.

“From: Commanding officer Headquarters Squadron U. S. Marine Corps Air Station, El Toro (Santa Ana), California.

“To: Veterans' Administration, Washington 25, D. C.

“Subj.: Statement of beneficiary case of the late Sergeant Wallace P. Gulley 504971 USMC.

“Ref.: (a) Your ltr 8BDAB over XC 6 245 952, Gulley, Wallace Phillip to Mrs. Mary J. Gulley, 2053 Cypress Street, Santa Ana, Calif., dated 30 Sep. 47.

“Encl.: (A) Certified copy of confidential statement of the late Sergeant Wallace P. Gulley, 504971, USMC. [36]

“1. As per your request, in reference (a) enclosed on his certificate true copy of Gulley's confidential statement which is in file at this office, in which he states that his wife, Mrs. Wallace P. Gulley, is the beneficiary of his National Service Life Insurance policy.

“FRANK C. KLEAGER, for

“G. W. NEVILS.”

(Testimony of Mary Jane Wauson.)

On the reverse side it appears this was received October 17, 1947, Communication Division Veterans Administration—some word I can't read and a figure 46—also shows received October 21, 1947—also received October 24—SP—Service Unit. Received Adjudication Unit 4, October 29, 1947, National Service Life Insurance Claims Division.

The Court: That is Exhibit D, is it?

Mr. Custer: Yes, your Honor.

(Noon recess taken at 11:50 a.m.)

Afternoon Session—June 22, 1953—1:30 P.M.

MRS. WAUSON

resumes the witness stand on further

Direct Examination

By Mr. Smith:

Q. Mrs. Wauson, Mrs. Barbee gave testimony on the stand this morning that there had been some trouble between yourself and your husband. Is that true?

A. No, we were very happy. [37]

Q. Up to the time of his death?

A. That is correct.

Q. Mrs. Wauson, have you made any arrangement or any agreement between myself and Mr. Custer with relation to attorneys' fees?

A. No, I have not.

(Testimony of Mary Jane Wauson.)

Q. And have you paid both of us, or either of us, anything on account of attorneys' fees?

A. No.

Mr. Smith: You may cross-examine.

### Cross-Examination

By Mr. Gill:

Q. Mrs. Wauson, I believe you said this morning that that confidential statement which was found at El Toro, that photostatic copies were made of it before it was delivered to you?

A. That is correct.

Q. How did you know that? Did you ever see the photostatic copies?

Mr. Custer: I do not think that was her testimony. The witness testified that the man who worked there at this El Toro came in and typed out a copy. There was nothing about making photostatic copies in her presence.

Mr. Gill: She said subsequently and before delivered to her, they made photostatic copies. I would like to know if she still says that. [38]

(Record read.)

The Court: What was the question?

Mr. Gill: According to my notes, she mentioned photostatic copies and she just answered that she thought they were phototastic copies and I asked her if she had ever seen them.

The Court: It doesn't appear that that is correct.



(Testimony of Mary Jane Wauson.)

Mr. Gill: Perhaps not.

Q. Then, Mrs. Wauson, the only copies that you know of being made were made by some one in type-writing there in the office, that is the only ones you saw made?

A. I didn't see them made, but there were supposed to have been copies made.

Q. Later you received one?

A. I received the original.

Mr. Gill: I think the exhibit shows otherwise, your Honor. That she received a letter from the Base with a true copy of it—that, I believe, is the exhibit C, is it not?

Mr. Custer: No, that isn't the testimony. Exhibit C says that the Captain had sent a copy to Washington, but this lady now testifies that she later received the original, which has now been introduced in evidence and admitted by your Honor.

The Court: As Exhibit A?

Mr. Custer: That is correct; on June 27, 1951.

Mr. Gill: What is Exhibit B?

Mr. Custer: Call it Exhibit A and A has now become A-1. [39]

The Court: Let it stand the same way it was. (This Exhibit B is the policy.)

Mr. Gill: I will withdraw the question.

Q. Then, Mrs. Wauson, the only photographic copy you know is the one you had made by Russel D. Luce at Santa Ana? You had that made, didn't you, or did you?

A. I don't remember having any copy made.

(Testimony of Mary Jane Wauson.)

Mr. Smith: I might state, your Honor, on October 24, 1950, I caused photographic copy of the confidential statement to be made and counsel was furnished with a certified copy of the photograph of the original confidential statement, so I doubt if Mrs. Wauson understands the difference between photostatic and photographic.

The Court: What exhibit number is that?

Mr. Smith: This is a photograph of A, your Honor.

The Court: Is it marked as an exhibit here?

Mr. Smith: No, it is my personal copy.

Mr. Gill: Will counsel tell me this—what was it that was sent to Washington with letter from the commander? That was a typed copy, was it not?

Mr. Smith: The exhibit is here, counsel. It says a certified typewritten copy was sent to Washington.

Mr. Gill: There never was a photostatic copy sent anywhere to any one?

Mr. Smith: No. They had no equipment for photostatic [40] at El Toro, so they had to type it.

Q. You said you went to El Toro looking for records in connection with a damage suit you had. What became of that damage suit?

Mr. Custer: That is objected to, your Honor, as wholly immaterial.

Mr. Gill: She brought it in.

The Court: Objection sustained. We are not interested in that damage suit.

Mr. Gill: We had something on that. If the

(Testimony of Mary Jane Wauson.)

Court's ruling stands, I can't ask any more questions.

The Court: What do you mean by that?

Mr. Gill: We intend to bring out that she asked her husband's mother and father to be present and when the trial came on she herself didn't show up.

The Court: I don't see what that has to do with the case. The ruling will stand. Objection sustained.

Q. Did you ever see a form requesting change of beneficiary signed by your husband?

A. No, I don't think I did.

Q. You thought there should be one?

Mr. Custer: Objected to as arguing with the witness.

The Court: Objection sustained.

Q. Mrs. Wauson, you said this morning you were a bank teller for some years, or some time? [41]

A. Yes.

Q. Did you continue to work at that during your married life? A. I was a bookkeeper.

Q. You never gave up your job while you were married? A. No.

Q. You and Wallace had no children, either before or after his death? A. No.

Q. Have you any children now, any child?

A. Yes, I have one.

Q. That is the child whose act of God caused the last postponement when we were to meet?

Mr. Custer: I object to that as absolutely immaterial.

The Court: Yes.

(Testimony of Mary Jane Wauson.)

Mr. Gill: There was a statement a couple of months ago, a statement she expected a child.

The Court: We are not interested in that. I don't see what bearing it has on this case.

Q. You have testified that there was no trouble between you and your husband during your married life?      A. Yes, definitely.

Mr. Gill: That is all.

Mr. Smith: You may step down.

Mr. Custer: Your Honor please, at this time we desire to offer in evidence the affidavit which is contained in the files [42] admissible for any purpose.

### Rebuttal Testimony

#### MRS. BETTY GULLEY

having been previously sworn, testified as follows:

#### Direct Examination

By Mr. Gill:

Q. You testified previously, Mrs. Gulley, that your daughter-in-law came up here for the funeral, up to Ely?      A. Yes, she came.

Q. When did she return, if you recall?

A. She returned that evening on the night bus with Neil Baker, the day Wallace was buried, with Neil Baker.

Q With Neil Baker?      A. Yes.

Q. That was the only occasion when you ever met Mr. Baker?

A. That's the first time I ever saw Mr. Baker,

(Testimony of Betty Gulley.)

when he arrived with Wallace's body. I had never even heard Wallace mention him or heard of him before.

Q. When your son came up on or about Mother's Day of 1947, what was said about his wife not accompanying him?

A. Well, he said he wanted Mary to accompany him but she couldn't get off from work, and he returned on Monday.

Q. Anything further?

A. Well, he said that she wouldn't accompany him and later he called her before he left and she wasn't at her place where they had rooms and he couldn't get in touch with her and they [53] told him she was in San Francisco.

Mr. Custer: No cross-examination.

### MRS. BARBEE

was recalled, and having been previously sworn, testified as follows:

#### Direct Examination

By Mr. Gill:

Q. Now Mrs. Barbee, you testified this morning as to conversation with your brother while he was in Ely the last time. I think we were cut off there or stopped on objections. Do you recall anything that he said regarding his family life?

Mr. Custer: I am going to object to that question as calling for pure hearsay.

(Testimony of Virginia Barbee.)

The Court: Objection sustained.

Q. Did he make any statement to you regarding his desire for a home?

Mr. Custer: Objected to, your Honor.

The Court: Objection sustained.

Mr. Gill: That will be all. Plaintiff rests. [54]

State of Nevada,  
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the testimony adduced in the case entitled, Betty Gulley, Plaintiff, vs. The United States of America and Mary Jane Gulley, Defendants, No. 867, at the trial held in Carson City, Nevada, June 22, 1953, and that the foregoing pages, numbered 1 to 54 inclusive, comprise a true and correct transcript of my said shorthand notes, to the best of my knowledge and ability.

Dated at Carson City, Nevada, June 25, 1953.

/s/ MARIE D. McINTYRE,  
Official Reporter.

[Endorsed]: Filed June 25, 1953.

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, Amos P. Dickey, Clerk of the United States District Court for the District of Nevada, do hereby certify that the accompanying documents and exhibits, listed in the attached index, are the originals filed in this court, or true and correct copies of orders entered on the minutes or dockets of this court, in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 21st day of April, A. D. 1954.

[Seal]     /s/ AMOS P. DICKEY,  
                        Clerk.

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[Endorsed]: No. 14328. United States Court of Appeals for the Ninth Circuit. Betty Gulley, Appellant, vs. Mary Jane Gulley, also known as Mary J. Gulley, now Mary Jane Wauson and United States of America, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Nevada.

Filed April 22, 1954.

                    /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 14328

BETTY GULLEY,

Appellant,

vs.

THE UNITED STATES OF AMERICA and  
MARY J. GULLEY, Also Known as MARY J.  
GULLEY, Now MARY J. WAUSON,

Appellees.

STATEMENT OF POINTS UPON WHICH  
APPELLANT INTENDS TO RELY

Under Rule 17, subdivision 6 of the Rules of this Court the appellant hereby makes the following as a statement of the points on which she intends to rely:

1. The Court erred in sustaining objection to question asked the defendant Mary Jane Wauson on cross-examination as to what became of a damage suit she had instituted against the person who ran into her husband, causing his death, a matter which had been mentioned by her on direct examination by her attorneys.

2. The Court erred in sustaining objections to questions asked the witness Virginia Barbee on rebuttal as to whether she recalled anything the decedent had said regarding his family life, or his de-



sire for a home. Objections were on the ground of hearsay, although the defendant had testified freely and without objection on hearsay matters, what her husband had told her on several occasions.

3. The Court erred in its decision as set forth in the Opinion, Findings, etc. in seemingly holding that the confidential statement filed by the decedent with his commanding officer was in itself a change of beneficiary. *Kendig vs. Kendig*, 9th Circ., 170 F. 2d 750, cited in the opinion, should be distinguished from the instant case due to the existence of evidential factors in the *Kendig* case, e.g., testimony of disinterested witnesses or a witness that the decedent *Kendig* had said that he had sent in a form changing the beneficiary of his insurance, and nothing of the kind, as will be developed in brief hereafter, in the instant case.

Dated April 23, 1954.

/s/ ROBERT R. GILL,

Attorney for Appellant.

Affidavit of service by mailing attached.

[Endorsed]: Filed April 26, 1954.

